IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8468 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DALPATBHAI JASRAJ DALWADI & 2 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS MEGHA JANI for Petitioner(s) : 1 - 3.
MR NIRAJ SONI, AGP for Respondent(s) : 1 - 2.
MR HARIN P RAVAL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 18/12/2006

ORAL JUDGMENT

1. The short facts of the case are that the father of the petitioners executed a document of

usufructuary mortgage on 16.1.1951 for the land admeasuring 5 acres and 11 gunthas with one Nanji Magha Dalwadi and the land was mortgaged for 99 years for borrowing Rs.6,000/-. The father of the petitioners expired on 22.7.1976. On 14.8.1976, the Gujarat Rural Debtor's Relief Act, 1976 (hereinafter referred to as “the Act”) came into effect. The petitioner applied to the Debt Settlement Officer for relief under the Act and on 26.5.1978, the Debt Settlement Officer decided in favour of the petitioners by relieving the petitioners from debt. The appeal was preferred against the decision of the Debt Settlement Officer by respondent No.3 and the said appeal came to be dismissed on 26.10.1979. The matter was further carried before this Court by respondent No.3 by preferring SCA No.44 of 1980 and this Court (Coram: C.V. Jani, J.) on 27.7.1990 passed the judgement, whereby it observed, inter alia, that whether the land was an irrigated land or not is not properly examined by the officer concerned so as to satisfy the requirement of small and marginal

farmer and, therefore, the matter was remanded to the concerned officer for his decision. It appears that thereafter once again the matter was considered by the Debt Settlement Officer and as per the decision dated 14.5.1976 the Debt Settlement Officer found that there was no permanent irrigation facility over the land and, therefore, the land cannot be treated as irrigated land and found that the holding of the petitioner is below the prescribed limit and vide order dated 14.5.1996, the Debt Settlement Officer relieved the petitioners from the debt and further directed for relieving of the land and also observed that for the recovery of the income of the crop exceeding the amount double than the principle loan amount, the claimant will be required to undertake separate appropriate proceedings. It appears that thereafter the matter was carried in appeal being Appeal No.1/1996 and in the appeal the Appellate Officer found that the land was an irrigated land and, therefore, the limit of holding by the petitioners would exceed the

prescribed limit and, therefore, they are not small and marginal farmers. Even on the aspects of income, the Appellate Officer observed that there was also other additional income and, therefore, livelihood of the petitioners were not only dependent upon the agricultural income and ultimately the appeal came to be allowed as per the decision dated 16th September, 1996. It is under these circumstances the petitioners have approached this Court by the present petition.

2. Heard Ms.Jani, learned Counsel for the petitioners, Mr.Raval, learned Counsel for the private contesting respondent No.3 and Mr.Soni, learned AGP for respondents No.1 and 2.

3. It was contended on behalf of the petitioners by the learned Counsel that the income limit is applicable to only rural artisans and it does not apply to the small and marginal farmers as per the Scheme of the Act and, therefore, there is an error committed by the Appellate Officer in relying upon the income of the petitioners.

4. In my view, such aspect is not required to be

decided namely as to whether the income limit is to be considered for rural artisans only or also for small and marginal agriculturists, and the reason being that it is on account of misconception the contention is raised on behalf of the petitioners. The income of Rs.2,400/- is not referred by the Appellate Authority for denying the claim of the petitioners on the ground that the income is above the prescribed limit, but is referred to consider as to whether the livelihood of the petitioner was only dependent upon the agricultural income or not. As per the provisions of the Act, if the definition of the word “debt” is considered, as provided under Section 2(d) of the Act read with the definition of “marginal farmer” or “small farmer” as provided under Section 2(a) and 2(p) of the Act, whether the concerned farmer/s was/were earning his/her livelihood principally from cultivating the land or not is a relevant circumstances, therefore, the income is referred. Hence, it cannot be said that any error is committed by the Appellate Officer of

jurisdiction in considering the other income income of the concerned agriculturist, leaving aside the question as to whether such would have any bearing for earning the livelihood principally by cultivating the agricultural land or not.

5. The learned Counsel for the petitioner raised the second contention that for treating any agricultural land as irrigated land there must be assured facility of irrigation and the appellate officer has committed error on the face of the record in not properly considering the said aspect. She has relied upon the decision of this Court in the case of **"Gulabsing Kabhai v. Patel Chimanbhai Shivabhai", reported in 1972 GLR, 1002** for contending that if there is no assured supply of water the land cannot be treated as irrigated land. In furtherance to her submission, she contended in the deposition of the irrigation officer, it did come on record that in the year 1978-79, as there was no sufficient water in the dam, no water was supplied to the agricultural lands and,

therefore, in her submission, the said aspect is sufficient to conclude that there is no assured irrigation facility for the land in question. Therefore, it was submitted that the appellate officer has wrongly concluded that the land is an irrigated land. Whereas Mr.Raval, learned Counsel appearing for the respondent submitted that if there is existence of the facility of the irrigation, the same is sufficient and upon the appreciation of evidence when the conclusion is arrived at by the appellate officer, the same may not be upset by this Court under Article 227 of the Constitution of India.

6. As per the provisions of the Act, the words “small farmer” are defined under Section 2(p) and the explanation (1) of the said definition reads as under:

> ***Explanation 1.-*** *Where a person holds irrigated land, whether exclusively or along with other non-irrigated land, the extent of land deemed to be held by him for the purpose of this clause so far as such*

irrigated land held by him is concerned shall be considered to be twice the extent of such irrigated land."

It appears that under the Act, the word "irrigated land" is not defined. However, if the meaning of the words "irrigated land" is to be traced, the reference can be made to the Gujarat Agricultural Lands Ceiling Act, 1960, wherein as per Section 2(6) while distinguishing the classes of lands, there are also classes of perennially irrigated land and seasonally irrigated land. The words "perennially irrigated land refers to the land, which is assured of the regular and actual supply of water for a period of not less than 10 months during the year from any source of irrigation and consequently capable growing at least two crops in a year or is utilized for growing of sugarcane. The words seasonally irrigated land as per the said Act means the land which is assured of regular and actual supply of water for a period of less than three months, but not

less than 4 months during the period from 15th September to end of February in a year and consequently capable of growing at least one crop in a year. It is true that in the meaning of both the perennially irrigated as well as seasonally irrigated land, the language is of assured regular and actual supply of water for a particular period. But such cannot be read to change the class of the land if due to less quantity of water in a dam for one year, the water was not provided for irrigation facility. The test would be whether normally the irrigation facilities are available to the land in question or not, irrespective of the fact that the person concerned uses the water facility or not. If the deposition of the Canal Officer is considered, it has come on record that in the year 1976-77 for crop of two seasons, the water was demanded and the same was supplied. Even for the period of 1979-80 the same position had continued of availability of water. However, it is only in the year 1978-79, the water has not been given due to less

quantity of water in the dam and it has been stated by the officer that the demands were not made for irrigation of the crop of the agricultural land. Therefore, out of the said years, 1977-78, 1978-79, and 1979-80, for the period of two years the water facility for irrigation was available. Further, the land as stated by the officer in the cross-examination, is in the near area of the dam. Therefore, if the aforesaid aspects are considered, it can be said that the irrigation facility is normally available to the land in question. Therefore, the finding of the appellate officer cannot be said as perverse to the record or by having committed error apparent on the face of record, so as to satisfy the test for interference by this Court under Article 227 of the Constitution of India. In the decision of this Court in case of **"Gulabsing Kabhai v. Patel Chimanbhai Shivabhai" (supra)**, no such question arose for considered of the Court as to whether the land can be said as irrigated land, if normally the irrigation facilities are available. Therefore,

the said decision cannot be read as laying down the principle that if in normal circumstances, the water facility for irrigation is available, but due to less quantity of water in a single year, water was not available for irrigation, the land would no outside the classification of the irrigated land. Therefore, the said contention of the learned Counsel for the petitioner cannot be accepted.

7. If the holding of the petitioner of the agricultural land are above the prescribed limits on account of the land being treated as irrigated land, the petitioners would be outside the definition of marginal and small farmers, so as to get entitlement of the benefits of the Act. Therefore, the other aspects of the income of the petitioners principally by cultivating the said land or of having the other additional income of Rs.2,400/- as found by the appellate officer, in my view, may lose its importance if the order of the appellate officer, which is impugned in this petition is maintained on the ground that the petitioners were not small and

marginal farmers as the land held was above the prescribed limits. Therefore, I find that it may not be required by this Court to consider the submissions made by the learned Counsel appearing for both the sides on the aspects of earning livelihood principally by cultivating the land or not.

8. In the result the petition fails. Rule discharged. There shall be no order as to costs.

9. At this stage, Mr.C.A.Mehta, learned Counsel appearing for the petitioners, prays that the ad-interim relief granted by this Court as back as in the year 1997, be continued for some time, so as to enable the petitioners to approach before the higher forum. Considering the facts and circumstances, the interim order shall continue to remain in operation for a period of four weeks from today.

20.12.2006 **(Jayant Patel, J.)**

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